KHO AH SOON

v.

OOI KAR SENG (PROPERTIES) SDN BHD

COURT OF APPEAL, KUALA LUMPUR
DATUK SHAIK DAUD BIN HJ. ISMAIL JCA
DATUK SITI NORMA YAAKOB JCA
DATO' V.C. GEORGE JCA
[CIVIL APPEAL NO. P-02-56 OF 1994]
26 JULY 1995

INJUNCTION: *Interlocutory injunction - Discharge of - Whether proper - Injunction based on sale and purchase agreement - Whether agreement concluded - Trial Judge finding that there were triable issues to be tried but ruled that balance of convenience tilted against appellant - Whether finding on balance of convenience unjustified - Whether status quo to be maintained.*

By an agreement dated 26 February 1994, the respondent agreed to sell 30 parcels of land to the appellant at an agreed price of RM38,227,275. On 4 March 1994, the respondent's solicitors wrote to the appellant confirming the agreement. The respondent subsequently decided to back out from the agreement and on 24 March 1994 they informed the appellant that they wished to abort the same. The appellant thereupon lodged two caveats on the lands, and on 27 June 1994 filed a suit against the respondent claiming for specific performance. On the same date the appellant successfully applied, *ex-parte*, for an extension of the caveats as well as an injunction to stop the respondent from disposing of the land.

On 4 July 1994 the respondent filed a summons in chambers to set aside the interim injunction and the extension of the caveats. This was followed by a summons in chambers filed by the appellant applying for the injunction to be heard *inter partes.* The facts showed that in their effort to have their application heard urgently, the respondents also filed a Certificate of Urgency wherein they adverted that they were then negotiating with certain prospective buyers to sell the lands and that the caveats were jeopardising the negotiations.

The aforesaid two applications were heard jointly by the learned Judge, who, whilst acknowledging that there were triable issues to be tried, nevertheless allowed the respondent's application, removed the caveats and dismissed the appellant's application for interlocutory injunction. The learned Judge opined that there was no evidence to suggest that the respondent had intended to part with the lands, that in view of the hefty price it was doubtful that the appellant had the financial ability to conclude the sale, or to pay the damages should his claim fail, and that, therefore, the balance of convenience must tilt against the appellant. The appellant appealed and before the appeal Judges the issues that arose were:

1. Whether there had been a concluded sale and purchase agreement between the parties as to entitle the appellant to maintain both the caveats and the injunction.

2. In any case, whether the finding of the learned trial Judge on the question of balance of convenience was proper and justified.

Held:

Per Shaik Daud bin Hj Ismail JCA (Siti Norma Yaakob, V.C. George JJCA concurring):

[1] In view of the letter from the respondent's solicitors dated 4 March 1994 confirming that an agreement had already been concluded, the respondent's contention that there was no concluded agreement reached between the parties is hard to swallow.

[2] The respondent's Certificate of Urgency clearly constitutes evidence of a threat to dispose of the property. The learned Judge's reasoning that in view of the price agreed it would not be easy to get a buyer is unsustainable. The evidence contained in the Certificate of Urgency showed that there were ready buyers and negotiations were going on with several of them.

[3] The fact that there was in existence an impending threat to dispose of the property is in itself sufficient for the *status quo* to be maintained. This being the case, and the fact that the learned Judge rightly held that there are serious issues to be tried as to whether a concluded contract existed, the balance of convenience must tilt in favour of the appellant. Further, land being a valuable and special commodity, once lost, may not be adequately compensated by damages. The appellant, hence, ought to be held entitled to maintain the caveat and the injunction.

[4] There is no reason why the appellant should be deprived of the benefit of a specific performance of the agreement which he says was concluded. All that he is asking for is for his claim to be tried and until then the respondent should not jeopardise the position by disposing of the property. To maintain the *status quo*, the fact that the appellant has averred that he is at all material time ready and willing to conclude the sale is good enough, and questions of financial ability should not affect the position of the essential justice between the parties.

Per Siti Norma Yaakob JCA:

[1] The respondent, whilst maintaining that there was no concluded agreement reached with the appellant, had acted contrary to that contention. This is clearly evidenced by the issue of the letter dated 4 March 1994.

[2] The trial Judge's finding that there is no basis for the appellant to fear that the respondent intended to part with the property is without basis, as there is ample evidence to the contrary. The respondent's own Certificate of Urgency stated in no uncertain terms that they were negotiating with other buyers for the sale of the property and that the presence of the caveats were jeopardising such negotiations. In fact this could be the very reason why the respondent decided to back out from the agreement.

[3] The trial Judge's finding that as an individual the appellant would be hard pressed to meet his financial obligations under the agreement is rather naive. As long as the appellant has averred that he is ready and willing to purchase the lands, it is not for the Court to question just where he is going to source the funds to meet his financial obligations. In the circumstances the caveats and the injunction granted earlier to the appellant ought to be restored.

[Appeal allowed. Respondent's cross appeal dismissed].

***[Bahasa Malaysia** Translation of Headnotes]*

***INJUNKSI:** Injunksi interlokutori - Pelepasan - Samada wajar - Injunksi berdasarkan perjanjian jualbeli - Samada perjanjian telah muktamad - Keputusan Hakim perbicaraan bahawa terdapatnya isu-isu yang boleh dibicarakan untuk dibicarakan tetapi memutuskan bahawa imbangan keselesaan memihak kepada perayu - Samada keputusan mengenai imbangan keselesaan tidak dapat dipertahankan - Samada status quo patut dikekalkan.*

Melalui satu perjanjian bertarikh 26 Febuari 1994, responden telah bersetuju untuk menjual 30 bidang tanah kepada perayu pada harga yang telah dipersetujui sebanyak RM38,227,275. Pada 4 Mac 1994 peguamcara responden telah menulis kepada perayu mengesahkan perjanjian tersebut. Responden kemudiannya membuat keputusan untuk menarik diri daripada perjanjian tersebut dan pada 24 Mac 1994 mereka memaklumkan kepada perayu bahawa mereka berniat untuk menamatkan perjanjian tersebut. Perayu selepas itu telah memasukkan dua kaveat keatas tanah-tanah tersebut dan pada 27 Jun 1994 telah memfailkan satu guaman terhadap responden menuntut pelaksanaan spesifik. Pada tarikh yang sama perayu telah dengan jayanya memohon secara *ex parte*, untuk melanjutkan kaveat tersebut dan untuk mendapatkan injunksi bagi menghalang responden daripada melupuskan tanah tersebut.

Pada 4 Julai 1994 responden telah memfailkan saman dalam kamar untuk mengenepikan injunksi interim dan perlanjutan kaveat-kaveat tersebut. Ini telah dituruti oleh satu saman dalam kamar yang difailkan oleh perayu yang memohon supaya injunksi tersebut didengar secara *inter-partes.* Fakta menunjukkan bahawa dalam usaha mereka supaya permohonan mereka didengar segera, responden telah juga memfailkan Sijil Kesegeraan dalam mana mereka merujuk bahawa mereka ketika itu sedang berunding dengan bakal pembeli untuk menjual tanah-tanah tersebut dan bahawa kaveat yang ada itu menjejaskan perundingan tersebut.

Kedua-dua permohonan di atas telah didengar secara bersama oleh Hakim yang bijaksana, yang, sementara mengesahkan bahawa terdapat isu-isu yang boleh dibicarakan, telah membenarkan permohonan responden, membatalkan kaveat-kaveat tersebut dan menolak permohonan perayu untuk injunksi interlokutori. Hakim yang bijaksana berpendapat bahawa tidak terdapat keterangan yang mengesyorkan bahawa responden telah berniat untuk melepaskan tanah-tanah tersebut, bahawa memandangkan harganya yang tinggi adalah diragui bahawa perayu mempunyai keupayaan kewangan untuk menyelesaikan penjualan tersebut, atau membayar gantirugi jika tuntutannya gagal, dan bahawa, dengan itu, imbangan keselesaan haruslah memihak kepada perayu. Perayu telah merayu dan dihadapan Hakim-hakim rayuan isu-isu yang terbit adalah:

1. Samada terdapat perjanjian jualbeli yang muktamad antara pihak-pihak disini yang boleh memberikan hak kepada perayu untuk mengekalkan kedua-dua kaveat dan injunksi tersebut.

2. Walau apa pun, samada keputusan Hakim perbicaraan yang bijaksana terhadap persoalan imbangan keselesaan wajar dan patut dipertahankan.

Diputuskan:

Oleh Shaik Daud Hj. Ismail HMR (Siti Norma Yaakob, V.C. George HHMR menyetujui):

[1] Memandangkan surat daripada peguamcara responden bertarikh 4 Mac 1994 mengesahkan bahawa satu perjanjian telah dimuktamadkan, penegasan responden bahawa tidak terdapatnya perjanjian muktamad yang dicapai antara mereka sukar diterima.

[2] Sijil Kesegeraan responden dengan jelasnya telah membangkit keterangan bahawa wujud ugutan untuk melupuskan harta tersebut. Alasan Hakim yang bijaksana bahawa memandangkan harga yang dipersetujui ianya mungkin tidak mudah untuk mendapatkan pembeli tidak boleh dipertahankan. Keterangan yang ditunjukkan dalam Sijil Kesegeraan menunjukkan bahawa terdapat pembeli-pembeli dan perundingan sedang berjalan dengan sebilangan dari mereka.

[3] Hakikat bahawa wujudnya ugutan untuk melupuskan hartanah tersebut adalah secara tersendirinya memadai untuk mengekalkan *status quo*. Dalam keadaan ini, dan memandangkan Hakim yang bijaksana telah secara betulnya memutuskan bahawa terdapat isu-isu untuk dibicarakan berhubung dengan samada kontrak yang muktamad wujud, imbangan keselesaan mestilah memihak kepada perayu. Lagipun tanah adalah merupakan komoditi berharga dan istimewa, yang jika dilupuskan, mungkin sukar untuk dipampas melalui gantirugi. Perayu, dengan itu, haruslah diputuskan berhak untuk mengekalkan kaveat dan injunksi tersebut.

[4] Tidak terdapat sebab mengapa perayu seharusnya dilucut hak daripada faedah perlaksanaan spesifik perjanjian tersebut yang mana beliau menyatakan telah pun dan menjadi muktamad. Apa yang beliau minta hanyalah supaya tuntutannya dibicarakan dan sehingga itu responden seharusnya tidak menjejaskan kedudukan dengan melupuskan hartanah tersebut. Untuk mengekalkan *status quo*, hakikat bahawa perayu telah menegaskan bahawa beliau bersedia pada setiap waktu yang material untuk menyempurnakan dengan muktamad penjualan tersebut adalah cukup baik dan persoalan kemampuan kewangan seharusnya tidak menjejaskan kedudukan keadilan yang penting antara pihak-pihak tersebut.

Oleh Siti Norma Yaakob HMR:

[1] Responden, sementara mengatakan bahawa tidak terdapat perjanjian muktamad yang dicapai dengan perayu, telah bertindak secara bercanggahan dengan penegasan itu. Ini jelas dilihat dari surat bertarikh 4 Mac 1994.

[2] Keputusan Hakim perbicaraan bahawa tidak ada asas bagi perayu untuk bimbang bahawa responden berniat untuk melepaskan hartanah tersebut adalah tidak berasas kerana terdapat keterangan yang cukup bagi menyatakan yang sebaliknya. Sijil Kesegeraan responden sendiri menyatakan dalam terma-terma yang pasti bahawa mereka sedang berunding dengan pembeli-pembeli lain untuk penjualan hartanah tersebut dan bahawa kewujudan kaveat-kaveat tersebut menjejaskan perundingan sedemikian. Pada hakikatnya ini mungkin merupakan alasan sebenarnya mengapa responden memutuskan untuk menarik diri dari perjanjian tersebut.

[3] Keputusan Hakim perbicaraan bahawa sebagai seorang individu perayu mungkin terdesak untuk memenuhi tanggungan-tanggungan kewangannya dibawah perjanjian tersebut agak lemah dan tidak meyakinkan. Asalkan perayu menegaskan bahawa beliau bersedia untuk membeli tanah-tanah tersebut, bukanlah tugas Mahkamah untuk mempersoalkan dari manakah beliau akan mendapat sumber kewangan untuk memenuhi tanggungan kewangannya. Dalam keadaan yang sedemikian kaveat-kaveat tersebut dan injunksi yang diberikan lebih awal kepada perayu harus dikekalkan.

[Rayuan dibenarkan. Rayuan balas responden ditolak].

Cases referred to:
Eng Mee Yong & Ors. v. V. Letchumanan [1979] 2 MLJ 212 ***(refd)***
Allen v Jumbo Holdings Ltd & Ors. [1980] 2 All ER 502 ***(foll)***

For the appelant - Mureli Navaratnam (M/s. Ghazi & Lim)
For the respondent - K. Balasundaram (M/s. Balasundaram & Co.)

JUDGMENT

Shaik Daud Hj. Ismail JCA:

This is an appeal for the restoration of an injunction and caveat which were ordered to be removed by the Penang High Court on 2 August 1994 pending trial of a claim for specific performance.

On 27 June 1994 appellant had filed a suit against the respondent company based on a written agreement entered between them on 26 February 1994. It was alleged in the said agreement that respondent had agreed to sell and appellant had agreed to buy some lands. The appellant also seeks an order for specific performance and continuance of a caveat he had earlier entered upon the land in question as well as for an injunction, damages and costs.

Earlier on the same day the writ was caused to be issued, on an application by the appellant *ex parte* the learned Judge had given an interim injunction restraining the respondent from transferring and dealing in the land in question and at the same time ordered the extension of the caveat earlier obtained until further notice.

On 4 July 1994 respondent filed a summons in chambers to set aside the interim injunction and the extension of the caveat. On 6 July 1994 appellant filed a summons in chambers for an interim injunction this time *inter partes*. The learned Judge heard both applications at the same time on 2 August 1994 and allowed the application by the respondent and ordered the *ex parte* interim injunction earlier given to be discharged and also ordered the removal of the caveat. Hence this appeal. The respondent has on the other hand filed a cross-appeal to have a part of the learned Judge's finding *viz*: that there is a serious question to be tried, set aside.

The salient facts are that by a written agreement made on or about 26 February 1994 (hereafter referred to as "the agreement") between the appellant and the respondent, the respondent had agreed to sell and appellant had agreed to buy all those pieces of lands known as Lot Nos. 111, 126, 205 to 206, 308 to 309, and 422 to 425 all in Mukim 6, Seberang Perai Selatan and Lot Nos. 114, 157, 201, 826, 1274, 1276 to 1279, 1297, 1302 and 1348 all in Mukim 7, Seberang Perai Selatan also known as Krian Estate Kedah (hereafter referred to as "the said property") for RM45,000 per acre.

The appellant had earlier exercised an option given to him by the respondent dated 4 November 1993, to purchase the property. As a result of several exchange of correspondences between the parties from 3 December 1993 to 7 February 1994 a meeting was held at which time appellant and the respondent agreed to certain terms for the purchase of the said property and pursuant to that respondent's solicitors wrote a letter dated 4 March 1994 confirming this agreement, and in which they referred to a draft sale and purchase agreement. Suddenly by a letter dated 8 March 1994 the respondent through their solicitors expressed their desire not to proceed with the sale of the said property to the appellant. After that there were exchange of correspondences between both solicitors which ended finally with a letter dated 24 March 1994 from the respondent's solicitor that respondent was unwilling to proceed with the sale. The appellant was at all

material time willing and able to conclude the purchase as earlier agreed. In order to preserve the *status quo* of the said property, appellant caused a caveat to be entered on 31 March 1994. Appellant filed this claim against respondent praying for specific performance, extension of the caveat and an injunction to stop respondent from disposing of the land. The respondent, on the other hand, contends that no concluded agreement was in fact reached for the sale and purchase of the said property. As for me I find it hard to accept this in view of the letter from the respondent's own solicitor dated 4 March 1994 which in fact confirmed that an agreement had been reached between the parties.

At the hearing before the learned Judge, he rightly came to the conclusion that what the Court was concerned then was whether there were serious triable issues. After considering the facts he concluded that there were serious triable issues as to whether there was or was not a concluded contract binding on both parties. Then he went on further to say that he should also consider the balance of convenience on whether the *status quo* ought to be maintained. Here the learned Judge relied on a passage from the celebrated case of *Eng Mee Yong & Ors. v. V. Letchumanan* [1979] 2 MLJ 212 PC where at page 215 Lord Diplock says:

> In the case of a refusal by the vendor to complete a contract for the sale of land the normal remedy of the purchaser as plaintiff in an action is an order for specific performance of the contract; in the absence of special circumstances, if it were shown that the vendor threatened to dispose of the land while the action was still pending, the balance of convenience would be in favour of granting an interlocutory injunction to prevent his doing so, provided that the plaintiff would be in a position to satisfy his undertaking as to damages if the action should fail at trial.

The learned Judge came to the conclusion that there was no evidence at all that the respondent had disposed, was in the process of disposing or had threatened to dispose of the said property. He added further that in view of the price allegedly agreed upon between the parties i.e. RM38,227,275 it would not be that easy to get a new buyer at that price.

On the issue of whether there was any evidence of a threat to dispose of the land, learned Counsel for the appellant brought to the attention of the Court, a Certificate of Urgency dated 4 July 1994 accompanying respondent's application for the removal of the caveat also dated 4 July 1994 which clearly gave the reason of the urgency for the application ought to be heard urgently that it would "affect negotiations between the respondents and would be buyers of the Krian Estate valued at over RM40 million." If this is not evidence of a threat to dispose of the land I do not know what is. As for myself, I am unable to accept the learned Judge's reasoning that in view of the price agreed upon it would not be easy to get a buyer. In these affluent times probably respondent would most probably be able to get several buyers not to speak of a buyer. In any case as I stated earlier the evidence contained in the Certificate of Urgency itself showed that there were ready buyers and negotiations were going on with several of them.

In view of the clear evidence of negotiations with other potential buyers of the said property, I find that there is sufficient evidence of an impending threat to dispose of the said property which in itself calls for the *status quo* to be maintained until after the disposal of the case. In the light of this and the fact that the learned Judge rightly held that there are serious issues to be tried as to whether a concluded contract existed, the balance of convenience must tilt in favour of the appellant. On this score alone the appellant is entitled to maintain the caveat and the injunction.

The learned Judge also considered two other issues. Firstly the learned Judge doubted the financial ability of the appellant to conclude the sale in view of the price involved. He also doubted the ability of the appellant to pay damages should he fail in his claim against respondent. In this respect I see no reason why the appellant should be deprived of the benefit of a specific performance of the agreement which he says was concluded. All he is asking is for his claim to be tried and until then the respondent should not jeopardise the position by disposing of the said property in the meantime. Appellant has averred that he is at all material time ready and willing to conclude the sale and this is good enough for me. Even plaintiffs who are poor should not be denied caveats and injunctions. Questions of financial ability should not affect the position of the essential justice of a case as between the parties. (See *Allen v. Jumbo Holdings Ltd & Ors.* [1980] 2 All ER 502). In that case it was held that the issue of *mareva* injunction ought not to be determined solely by a plaintiff's financial standing and in each case the issue of an injunction depended on the balance of justice and convenience.

Looking at the facts of the present case, it seems clear to me that as the learned Judge himself has rightly held that there are serious issues to be tried and as there is clear and unrefuted evidence of actual ongoing negotiations to dispose off the said property to other potential buyers, the balance of convenience and of justice must be in favour of maintaining the *status quo*. Land being a valuable and special commodity, once lost, may not adequately be compensated by damages.

For these reasons I find myself unable to support the decision of the learned Judge and therefore would allow the appeal with costs. As pleadings had been closed I would also order an early trial of the appellant's claim. In the light of the above decision I find no merits in the respondent's cross-appeal. There are in fact triable issues as was held by the learned Judge. Therefore, respondent's cross-appeal is dismissed with costs.

Deposit to be refunded to appellant. The deposit in the cross-appeal is to go to appellant towards taxed costs.

Siti Norma Yaakob JCA:

The only issue raised in this appeal is whether there has been a concluded sale and purchase agreement between the parties in these proceedings as to entitle the appellant/ purchaser, who was the plaintiff in the Court below to:

(1) maintain the two private caveats which he had lodged on 31 March 1994 against two pieces of land, being part of the subject matter of the purchase. He had subsequently on 27 June 1994 obtained an order *ex parte* extending the duration of the caveats until further order;

(2) maintain an injunction which he had obtained *ex parte* on 27 June 1994, restraining the respondent from dealing with the lands, the subject matter of the purchase, in whatever form.

On 4 July 1994, the respondent filed a summons in chambers to set aside the *ex parte* order obtained by the appellant on 27 June 1994 extending the duration of the caveats.

On 6 July 1994, the appellant had also filed a separate application to have the *ex parte* injunction obtained on 27 June 1994 heard *inter partes.*

The two applications were heard jointly by Abdul Hamid Mohamad J on 19 July 1994 and on 2 August 1994, the learned Judge whilst acknowledging that there are serious questions to be tried, allowed the respondents application, removed the two caveats lodged

by the appellant and dismissed the appellant's application for the interlocutory injunction on the ground that there is no evidence to suggest that the respondent intended to part with the lands to third parties. Hence the present appeal by the appellant to have the caveats and *ex parte* injunction restored. There is also a cross-appeal filed by the respondent to have that part of the learned trial Judge's finding that there are serious questions to be tried, set aside.

The appellant's claim against the respondent is for the specific performance of a sale and purchase agreement, the terms of which, he maintained had already been concluded between them, although the agreement was not formalised by its execution. Under the agreement, the respondent agreed to sell and the appellant to purchase 30 parcels of land, totalling 860 acres which forms part of the Kerian Kedah Estate, at the agreed price of RM45,000 per acre. It is not disputed that there had been various meetings and negotiations between them culminating in the meeting on 26 February 1994 when specific terms as to when payment of the purchase price becomes due and payable had been reached, so too the question of vacant possession and the position of five squatters on the lands in question. These terms were also recorded by the appellant's solicitor, Mr. Peter Mirinda.

The fact that these salient terms had been agreed upon was confirmed subsequently by the respondent by way of their solicitor's letter dated 4 March 1994.

Despite such confirmation, there were further correspondence between the parties regarding other terms which however did not touch on the salient terms already agreed upon on 26 February 1994. One of these other terms was the date the agreement should carry irrespective of when it would in fact be executed. Whilst the appellant preferred the agreement to be dated 15 March 1994, the respondent however wanted it to be dated 9 March 1994 and the upshot of this is that by letters dated 8 March 1994 and 9 March 1994 the respondent informed the appellant that they did not wish to proceed with the sale.

Despite these two letters, the appellant's solicitors by letter dated 19 March 1994 forwarded a draft agreement containing all the terms that had already been agreed upon to the respondent's comments. In anticipation of its execution appellant had also a day earlier on 18 March 1994 deposited 10% of the purchase price amounting to RM3,822,727.50 to his solicitors for onward transmission to the respondent's solicitors. However the deposit never reached the respondent as by letter dated 24 March 1994, their solicitors reiterated that the respondent did not wish to proceed with the proposed sale.

It was under these circumstances that the appellant lodged firstly the two caveats on 31 March 1994 to protect his interests over the lands and secondly obtained the *ex parte* injunction to maintain the *status quo*. Thus the first issue raised is whether the appellant has any caveatable interest to protect and whether the *status quo* should be maintained. This must hinge on the issue as to whether there has been a concluded agreement entered into between the parties. The trial Judge held that on the affidavit evidence and the contemporaneous documents, there are serious questions to be tried and when considering in whose favour the balance of convenience lies, he took note of the following factors.

(1) That as an individual, the appellant may be hard pressed and may not be financially sound to meet payment of the balance of the purchase price of over RM38 million bearing in mind that even the 10% deposit did not come from his own funds but were the funds of third parties;

(2) There is no evidence to suggest that the respondent intended to part with the lands to other third parties.

The trial Judge then made a finding that the balance of convenience lies in favour of the respondent as there are no special circumstances to warrant the caveats and the *ex parte* injunction to remain.

Whilst I accept the trial Judge's finding that there are serious questions to be tried, I however cannot accept the rest of his findings as the respondent, whilst maintaining there was no concluded agreement reached with the appellant had acted contrary to that contention. This is firstly evidenced by the issue of the letter dated letter dated 4 March 1994, wherein they have intimated their confirmation of the terms recorded on 26 February 1994 in the following manner:

> In view of the fact that your clients and ours had in principle agreed on the terms of the sale and purchase agreement on 26 February 1994, our clients would like the sale and purchase agreement when executed to be dated 1 March 1994 and would appreciate your confirmations.

Then again when the appellant's solicitors by their letter dated 19 March 1994 submitted the draft sale and purchase agreement to the respondents solicitors for their comments, there is a clear indication in that letter that the draft agreement was prepared by the appellant's solicitors at the request of respondent.

Secondly the contemporaneous documents show that the reason why the respondent backed out of the agreement is not so much that the terms had not been agreed upon but that there was no consensus as to the date that the agreement should carry. Whilst the appellant wanted 15 March 1994, the respondent preferred 9 March 1994.

As for the trial Judge's finding that there is no basis for the appellant to fear that the respondent intended to part with the property, here again there is ample evidence to the contrary. This is found in the respondent's own documents, this being their Certificate of Urgency filed in separate proceedings to have the caveats removed. In that certificate, they have stated in no uncertain terms that they were negotiating with other buyers for the sale of the same property and that the presence of the caveats were jeapordising such negotiations. This may well be the true reason why the respondent backed out of the agreement.

Lastly I come to the trial Judge's finding that as an individual, the appellant would be hard pressed to meet his financial obligations under the agreement. In this respect I consider that finding to be naive as there are many financial institutions in this country that would readily come to the aid of an individual like the appellant. It is true that the 10% deposit did not come from his own private funds but this is not an indication that he would not be able to raise the balance of the purchase price. The fact that the cheques of other third parties were utilised to meet the 10% deposit must be considered as part and parcel of the way business is conducted and nothing more. For as long as the appellant has averred that he is ready and willing to purchase the lands, it is not for the Court to question just where he is going to source the funds to meet his financial obligations.

As the present proceedings is only concerned with the protection of the subject matter of the dispute and maintaining the *status quo*, and since there is ample affidavit evidence and contemporaneous documentary evidence, to support the appellant's contention, the appellant's appeal is allowed with costs, the caveats and injunction are restored and the cross appeal is dismissed with costs. Since the pleadings have already been closed, an early trial of this suit is also ordered and that the deposit of the appeal be released to the appellant as well as the deposit of the cross appeal to account for the appellant's taxed costs.

V.C. George JCA:

For the reasons set out in the judgment of my learned brother Datuk Haji Shaik Daud JCA and my learned sister Dato' Siti Norma Yaakob JCA, I would also make the orders they propose be made in this appeal.